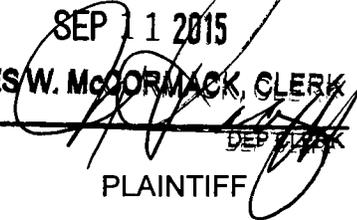


**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

SEP 11 2015

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

JAMES W. McCORMACK, CLERK  
By:   
DEPT. CLERK  
PLAINTIFF

WILLIAM R. DOWNING, JR.

VS.

CASE NO: 4:15CV570-DPM

DEPARTMENT OF FINANCE AND ADMINISTRATION,  
An Agency of the State of Arkansas  
BOB HAUGEN, Individual and Official Capacity  
And , DAVID JUSTICE, Individual and Official Capacity

  
DEFENDANTS  


This case assigned to District Judge

COMPLAINT and to Magistrate Judge

COMES THE PLAINTIFF, by and through Counsel and for his Complaint he states:

**PARTIES AND JURISDICTIONS**

1. Plaintiff is a resident and citizen of the State of Arkansas, who formerly worked for the Department of Finance and Administration, an agency of the State of Arkansas. The state Defendant is the Department of Finance and Administration (DFA), an agency and instrumentality of the State of Arkansas. This is an action brought under Title I of the ADA, §504 of the Rehabilitation Act of 1973, and the FMLA of 1993. The individual Defendants Bob Haugen and David Justice are individuals who decided to deny Plaintiff FMLA leave and fire him in violation of the FMLA. The State of Arkansas is not sued for damages under the FMLA, but each individual Defendant is sued for compensatory and liquidated damages in his individual capacity, as well as declaratory and injunctive relief under the doctrine of *exparte young*. Since the acts giving rise to this action arose in this county, venue is proper under §28 U.S.C. 1391(b). This Court has personal and subject matter jurisdiction under §28 U.S.C. 1331.

**GENERAL ALLEGATIONS OF FACTS**

- 2. Plaintiff was hired by the DFA in October of 2011.
- 3. At all times relevant, Plaintiff performed his job satisfactorily.
- 4. In 2014, Plaintiff began having difficulty with his hips, which caused him to be substantially limited in his ability to walk and engage in other regular activities.

5. So, Plaintiff approached his supervisor, Bob Haugen, and requested that he be allowed to leave in order to have his hips replaced.

6. Plaintiff was granted leave from a job that required only 50 pounds lifting.

7. However, Haugen and David Justice then refused to re-instate Plaintiff to a comparable position. When Plaintiff's FMLA leave expired, he was ready willing and able to do the job that he previously held, but Haugen and David Justice required Plaintiff to perform a job that he could not physically perform.

8. Indeed, Haugen and David Justice required Plaintiff to be 100% healed.

9. After six weeks, Haugen and David Justice refused to re-instate Plaintiff unless he could produce a doctor's release with no restrictions.

10. Then, within 12 weeks, Plaintiff returned with no restrictions. Haugen and David Justice then changed the job, from one week and one week off, as well as eventually increased the lifting requirements. This position was not comparable. Haugen and David Justice then terminated the Plaintiff because plaintiff requested FMLA leave as an accommodation.

### COUNT I

11. Plaintiff re-alleges foregoing against DF&A as if fully set out herein.

12. Plaintiff timely filed a Charge of Discrimination under Title I of the ADA of 1990 and will have received his Right-to-Sue letter by the time this matter is set for trial. Furthermore, Defendant is a federal financial aid recipient, as that term is defined by §504 of the Rehabilitation Act of 1973.

13. Plaintiff is a person with a disability, as that term is defined by the ADA and §504. Plaintiff is, or was regarded as, a person with a disability, as defined by §504 and the ADA, because he was substantially limited in his ability to walk and required hip surgery.

14. Accordingly, Plaintiff requested leave as an accommodation.

15. Plaintiff was granted leave by the Defendants, but then Haugen and David Justice refused to re-instate Plaintiff unless he was 100% healed.

16. As a result, DFA has failed to engage in a good faith interactive process designed to accommodate Plaintiff's disability and has discriminated on the basis of his disability in violation of §504 and the ADA.

17. Alternatively, Defendants have retaliated against Plaintiff by violating §504 and the ADA. Had Plaintiff not requested accommodation, Defendants would not have acted in the manner that they did.

18. As a direct and proximate cause of Defendants acts and omissions alleged herein, Plaintiff has suffered severe mental and emotional harm, lost wages, lost fringe benefits, and incurred other damages in an amount to be proven at trial.

#### **COUNT II-FMLA**

19. Plaintiff re-alleges the foregoing all Defendants as if fully set out herein.

20. Plaintiff is an eligible employee, working for a covered employer.

21. Since 2011, Plaintiff has worked for the Defendant until he needed hip replacement surgery. In the year before his FMLA leave, Plaintiff worked full-time, forty hours per week. He is therefore an eligible employee as that term is defined by the FMLA.

22. DF&A is a public entity, who, at all times relevant, employed more than fifty (50) people within seventy-five (75) miles of Plaintiff's former worksite in 2014 and 2013.

23. Accordingly, DF&A is an employer covered under the FMLA. At all times relevant, Haugen and David Justice were acting within the scope of the authority granted them by the DF&A. Haugen and David Justice had the ability to hire and fire the Plaintiff, as well as affect the terms and conditions of his employment.

24. Plaintiff gave timely and prompt notice of a need for FMLA leave, but Haugen and David Justice refused to reinstate him to his former position, or a comparable position, after FMLA leave. He saw a doctor more than two times, was prescribed medication, and was released from work for several weeks. In fact, Haugen and David Justice refused to re-instate Plaintiff to comparable position. At the end of his leave, Plaintiff was able to perform all

functions of his former job with reasonable accommodation, in the absence of Haugen and David Justice's violations of state and federal law.

25. However, Defendants discharged the Plaintiff in retaliation for requesting FMLA leave.

26. As direct and proximate cause of Defendant's acts and omissions alleged herein, Plaintiff has lost wages, lost fringe benefits, and incurred other damages in an amount to be proven at trial.

27. All Defendant's actions have been willful.

### COUNT III

28. Plaintiff re-alleges against the foregoing against Haugen and David Justice under the ACRA and FMLA individually as if fully set out herein.

29. DF&A is a public entity subject to the ACRA and the FMLA.

30. Plaintiff is a person with a disability because he can only lift 50 lbs.

31. Plaintiff has seen a doctor on more than two (2) occasions has been prescribed prescription medication and has been released from work for weeks.

32. Plaintiff requested accommodation in the form of FMLA leave as well as re-instatement to his position. This request was refused. However, both of these requests were reasonable as a matter of law because Plaintiff was entitled to re-instatement under the FMLA. Nonetheless, Defendants refused without a reasonable basis in law or fact.

33. Had Plaintiff not requested FMLA leave as an accommodation, he would be working now. Thus, Haugen and David Justice have retaliated against the Plaintiff by refusing to re-hire him in violation of the ACRA and the FMLA.

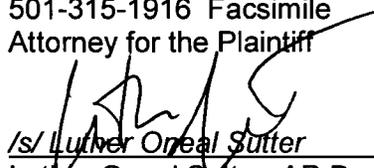
34. As direct and proximate cause of acts and omissions alleged herein, Plaintiff has suffered severe mental and emotional harm, lost wages, lost fringe benefits, and incurred other damages in an amount to be proven at trial.

35. Defendants' actions have been willful.

WHEREFORE Plaintiff prays for appropriate compensatory and liquidated damages exceeding \$75,000.00, punitive damages against the individual, for declaratory judgment that the Defendant's policy requiring individuals with disabilities to be 100% healed violates the ADA and ACRA, for an injunction requiring the Defendant to cease this illegal practice of requiring employees to be 100% healed, for Declaratory Judgment that such a policy violates the ADA, for re-instatement or front pay, for a trial by jury, for reasonable attorney's fees, for costs, and for all other proper relief.

Respectfully submitted,

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